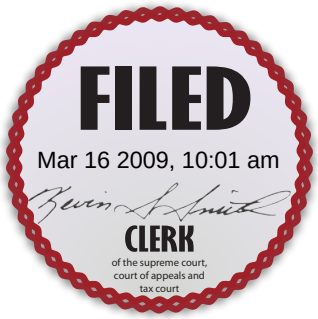

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IN THE COURT OF APPEALS OF INDIANA

GEORGE BROWN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0808-CR-740
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
The Honorable Steven Rubick, Commissioner
Cause No. 49F10-0806-CM-148034

March 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

When an officer attempted to arrest George Brown on an outstanding warrant, Brown pulled his hand from the officer's grasp and then ran away. Brown was convicted of resisting law enforcement, and he now appeals, challenging the sufficiency of the evidence that he forcibly resisted arrest. Concluding that the evidence is sufficient, we affirm.

Facts and Procedural History

On June 17, 2008, Officer Thomas Figura of the Indianapolis Metropolitan Police Department was conducting a routine patrol and stopped at a traffic light at the intersection of East 10th Street and North Jefferson Street in Indianapolis, an area known to Officer Figura as a high-crime location. Officer Figura, who was driving a fully-marked police vehicle and wearing a police uniform, observed Brown standing at the corner of an apartment building. After Officer Figura and Brown made eye contact, Brown quickly turned and walked behind the building.

Officer Figura followed in his car and observed Brown standing in the apartment building's parking lot. Aware that the "parking lot is in an area where narcotics are dealt, where narcotics are smoked, and where prostitution takes place," and because there are signs prohibiting trespassing there, Officer Figura asked Brown for identification to verify that he lived in the apartment building. Tr. p. 7. Brown provided identification that reflected an address other than the apartment building, and Officer Figura learned from a subsequent warrant check that Brown had an outstanding warrant.

Officer Figura informed Brown of the warrant and that he was going to arrest him. Brown did not initially comply with the officer's order that he put his hands on a nearby wall, but he complied after Officer Figura removed his taser from its holster. However, after Officer Figura put the taser back into its holster and attempted to handcuff Brown, Brown "turned 180 degrees" toward him, "ripped his hand out of [Officer Figura's] grasp, and immediately began to turn and flee[.]" *Id.* at 18, 19. Officer Figura told Brown to "stop fleeing." *Id.* at 20. When Brown did not stop, Officer Figura tased him and then placed him under arrest.

The State charged Brown with resisting law enforcement as a Class A misdemeanor.[1] Appellant's App. p. 15. After a bench trial, Brown was convicted as charged. *Id.* at 9. Brown now appeals his conviction.

Discussion and Decision

Brown argues that the evidence is insufficient to support his conviction for resisting law enforcement. When reviewing the sufficiency of the evidence, appellate courts must only consider the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it "most favorably to the trial court's ruling." *Id.* Appellate courts affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.*

[1] Ind. Code § 35-44-3-3.

at 146-47 (quotation omitted). It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Id.* at 147 (quotation omitted). "[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Id.* (quotation omitted).

In order to convict Brown of Class A misdemeanor resisting law enforcement as charged in this case, the State had to prove that he knowingly and forcibly resisted, obstructed, or interfered with Officer Figura while Officer Figura was lawfully engaged in the execution of his duties as a law enforcement officer. I.C. § 35-44-3-3(a)(1).[2] On appeal, Brown argues only that the evidence is insufficient to show that he forcibly resisted. A person "forcibly resists" law enforcement "when strong, powerful, violent means are used to evade a law enforcement official's rightful exercise of his or her duties." *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993); *Sapen v. State*, 869 N.E.2d 1273, 1280 (Ind. Ct. App. 2007), *trans. denied*. Mere passive resistance is not sufficient to sustain a conviction for resisting law enforcement. *Id.*

Brown correctly acknowledges that it is not the position of the appellate court to reweigh the evidence and that we will only consider the evidence in the light most favorable to his conviction. He contends, however, that there is no evidence "that the officer had to apply any sort of force whatsoever" when attempting to handcuff him. Appellant's Br. p. 7. The evidence presented at trial established that, when Officer

[2] In its charging information, the State did not specify under which provision of Indiana Code § 35-44-3-3 it wished to charge Brown with resisting law enforcement as a Class A misdemeanor. Appellant's App. p. 15. However, we glean from the parties' arguments at trial and the trial court's comments at the time it issued its verdict that the parties understood the charge to relate to Indiana Code § 35-44-3-3(a)(1). Another option would have been to charge Brown under subsection (a)(3), which deals with "flee[ing] from a law enforcement officer after the officer has, by visible or audible means, . . . identified himself or herself and ordered the person to stop[.]"

Figura attempted to place Brown in handcuffs, Brown "ripped his hand out of [Officer Figura's] grasp . . . and immediately began to turn and flee" by running away from the officer. Tr. p. 19-20. We have previously held that evidence was sufficient to show that a defendant forcibly resisted law enforcement when the defendant pulled his arm away from an officer's grasp as the officer tried to handcuff him. *Small v. State*, 632 N.E.2d 779, 783 (Ind. Ct. App. 1994), *trans. denied*. Applying the *Spangler* definition of forcible resistance, we observed that where a defendant pulls away from an officer's grasp, the defendant "necessarily engage[s] in force in order to" do so. *Id.* We concluded that such a defendant "use[s] power and strength to evade the officer's attempt to effectuate a lawful arrest." *Id.*[3]

Likewise, in this case, Brown "ripped his hand out of [Officer Figura's] grasp" as Officer Figura tried to handcuff him. Tr. p. 19. Further, Officer Figura testified that it was "difficult" to handcuff Brown. *Id.* at 20. The evidence is sufficient to show that Brown forcibly resisted Officer Figura. *Small*, 632 N.E.2d at 783.

Affirmed.

RILEY, J., and DARDEN, J., concur.

[3] In *Small*, the defendant additionally engaged in a physical struggle with the arresting officer. However, his conviction for resisting law enforcement rested only upon evidence that he pulled away from the officer and refused to put his hands behind his back. *Small*, 632 N.E.2d at 783.